and so says by its statute, that this remedy is necessary to enforce the execution of the law"; and MR. JUSTICE HOKE says: "And this, I apprehend, is the true principle on which forfeitures of this character can be sustained—whether it is done in abatement of the nuisance and is required by the reasonable necessity of the case."

The dissenting justices do not recognize the necessity for the arbitrary proceedings prescribed by the statute; and, while conceding the right of the legislature to regulate fishing, to prohibit the placing of nets in such parts of the public waters as it may deem proper and to declare such nets public nuisances which may be summarily abated by removal, they emphatically deny the validity of that part of the act conferring upon the oyster commissioner the power to seize the nets and sell them at auction without notice, either personal or constructive, or any judgment of condemnation by a judicial tribunal after a hearing.

Three justices of the Supreme Court dissented from the majority's conclusion in *Lawton* v. *Steele,* 152 U. S. 133, the New York Court of Appeals regarded the case "as very near the border line" (119 N. Y. 226, 240), and a recent thoughtful writer says "the principles which should govern the forfeiture of property were departed from in the decisions" in this case. (FREUND, POLICE POWER, § 527). It is not easy, in view of constitutional limitations, to see how the public welfare can be promoted ultimately if the doctrine of the principal case is sound. The authorities seem to sustain the propositions announced by MR. JUSTICE CONNOR: "(1) That the right to destroy property which is a public nuisance, either *per se,* or made so by statute, or becoming so by the manner of its use, is restricted to the necessity of the occasion or as an incident to the abatement. (2) That the power to declare property forfeited and subject it to sale by reason of its illegal use is judicial, and not legislative. That it can only be exercised as a penalty or punishment imposed upon the owner for violating the law, and, as a necessary conclusion, the forfeiture and condemnation can only be declared and enforced after a hearing or an opportunity to the owner to be heard." See FREUND, POLICE POWER, §§ 520-528; *Edson* v. *Crangle,* 62 Oh. St. 49, 56 N. E. 647; *McConnell* v. *McKillip* (Neb. 1904), 99 N. W. 505, 65 L. R. A. 610, and many other authorities cited in the dissenting opinions in the principal case. Fishing nets are capable of being put to lawful use, and are to be distinguished from implements exclusively intended to be used for violating the law and as such subject to summary seizure and detention. *Board of Police Commissioners* v. *Wagner,* 93 Md. 182, 48 Atl. Rep. 455, 86 Am. St. Rep. 423. J. H. B.

DYING DECLARATIONS.—A recent case decided in Nevada on the admissibility of dying declarations recalls the various changes this rule has undergone. This case holds that the sense of impending death necessary to support such a declaration may be shown by declarant's conduct and condition as well as his words. *State* v. *Roberts et al.* (1905), — Nev. —, 82 Pac. Rep. 100.

The first record of a dying declaration known dates as far back as 1202. 1 SELDEN SOCIETY 11, THAYER'S PRELIM. TREAT. 520. The earliest reason ad-

vanced for their admission was solely one of necessity. The only requirement was the death of the declarant and it was not necessary that they be made under a sense of impending death. (See note to *Reg.* v. *Morgan,* 14 Cox, C. C. 337.) In the case of *Wright* v. *Littler,* 3 Burr. 1244, Thayer's Cases, 351, decided by Lord Mansfield in 1761, the declarations in question were given about three weeks before declarant's death and nothing was said in the case of the necessity of their having been given under a sense of impending death. The same thing is true in the case of *Rex* v. *Reason,* 1 Strange 499, Thayer's Cases 349, decided in 1721. Later another theory as to the admission of such declarations came to be held. In *Woodcock's Case,* Leach, 4th ed. 500, Thayer's Cases, 355, decided in 1789 the reason, which has been quoted verbatim in innumerable cases since, was advanced that, "they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful, is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice." It has been argued that if this is the reason for admitting such declarations, they should be admitted in civil as well as criminal cases, and some of the early decisions seem to have taken this view. WIGMORE ON EVIDENCE, § 1431. In *Wright* v. *Littler, supra,* the dying declaration of a witness to a will was received, in which declarant said that the will was a forgery. This and a few other similar decisions have been explained by saying that in these cases the declarations were against the interest of the declarant, and it is stated in a later case that where the declaration is made for the purpose of clearing and not of accusing the declarant, that it will not be received. *King* v. *Mead,* 2 B. & C. 605. In the case of *Aveson* v. *Kinnaird,* 6 East 188, the following explanation is given: If the attesting witness had been living, he must have been called, and might have been cross-examined as to the validity of the instrument, the authenticity of which depends upon the credit given to it by his attestation. The only American case as far as known where dying declarations were admitted in a civil case is *McFarland* v. *Shaw,* 2 Car. Repos. (N. C.) 102. This case was overruled in *Barfield* v. *Britt,* 2 Jones L. (N. C.) 41. These cases are so few and their peculiar circumstances so many that the effort to prove that they support the contention that dying declarations were received in all cases, has not met with much success. *Stobart* v. *Dryden,* 1 M. & W. 615. *Wilson* v. *Boerem,* 15 Johns. (N. Y.) 286. Logically, of course, if their admission was based solely on their necessity and the probability of their being true from the solemnity of the occasion there would be no reason for restricting them to cases of homicide. But this is far from the fact. Neither of these theories gives us any logical reason for the rule as applied to cases of homicide that would not apply to other cases as well. Basing the reason for their admission upon the realization of impending death, the courts went to extreme lengths in refusing to admit these declarations unless there was certainty that such realization existed. In *Reg.* v. *Morgan,* 14 Cox C. C. 337, the declarant had his head nearly severed from his body and only lived a few minutes after writing a statement. The judges were unwilling to admit this without reserving a case for the Court for Crown Cases Reserved. This

decision is not so ludicrous as writers on Evidence have attempted to show that it is, as the test of admission is not only that declarant be in extremis, but that he realize that he is in such a state, because upon this realization rests the reason for believing the statement true. Common experience shows that a person may be in extremis and not realize the fact. Similar to the above case are *Reg.* v. *Cleary*, 2 F. & F. 850, *Reg.* v. *Bedingfield*, 14 Cox C. C. 341. The modern tendency, as illustrated by the main case, is to be more liberal and take into consideration the conditions and circumstances as well as the statements of the declarant. The best reason offered for the admission of such declarations seems to be the one advanced in *Marshall* v. *R. R.*, 48 Ill. 475: "The true foundation of the rule that they were admissible in cases of felonious homicide, were policy and necessity, since that crime is usually committed in secret, and it cannot be allowed to such an offender to commit the crime, and, by the same act still forever the tongue of the only person in the world which could speak his crime." As stated in another case, "Declarations at the best are uncertain evidence, liable to be misunderstood, imperfectly remembered, and incorrectly stated." *State* v. *Baldwin*, 79 Ia. 714. The reason given above for the admission of such declarations is believed to be a logical one and the danger of admitting such evidence seems to render it proper that such admissions be confined to homicide cases with the recognized limitations. The question has frequently arisen whether such declarations should be admitted in abortion cases, and apart from statute it has been decided that as the death of the declarant is not the subject of the charge, such declarations will not be admitted. *People* v. *Davis*, 56 N. Y. 95. In Indiana the death of the woman is made by statute an ingredient of the crime, and it has been decided that on this principle the declarations may be admitted. *Montgomery* v. *State*, 80 Ind. 338. In Massachusetts, New York and Pennsylvania statutes have been passed making dying declarations in abortion cases admissible. For a further discussion of the subject in other of its phases see article by Prof. V. H. Lane, 1 MICH. LAW REV., 624, also *ib.* 135. C. S. A.

"JUVENILE COURTS" AND JURY TRIALS FOR NEGLECTED, DELINQUENT CHILDREN.—The duty and the power of the state to assume control of children who are deprived of proper parental care are recognized in two recent decisions in which constitutional questions concerning the establishment and procedure of "Juvenile Courts" are considered. (*Commonwealth* v. *Fisher*, — Pa. —, 62 Atl. Rep. 198; *Hunt, Prosecuting Attorney* v. *Wayne Circuit Judges*, — Mich. —, 12 Det. Legal News 673, 105 N. W. Rep. —)

In Pennsylvania the act of 1903 created no new court, but conferred jurisdiction in caring for unfortunate or neglected children on an already existing court which the constitution recognized without defining its jurisdiction, and the objection made to the act that this tribunal was an unconstitutional body, and without jurisdiction, was overruled. In Michigan the act of 1905 attempted to confer upon the Circuit Court Commissioners of many counties judicial powers not conferred upon these officers by the constitution and, as the court considered that the language of the act indicated "not only the